

MAIDEN SPEECH IN THE PRESIDENCY OF THE SUPERIOR COURT OF JUSTICE*

ANTÔNIO DE PADUA RIBEIRO
Minister Superior Court of Justice

His Excellency Dr. Fernando Henrique Cardoso, President of the Republic, whose presence is an honor for this Court and constitutes a historical fact: this is the first time a President of the Republic visits the new Headquarters of the Court and attends to the taking of office of a President; His Excellency Dr. Marco Antônio de Oliveira Maciel, Vice-President of the Republic; His Excellency Minister Celso de Mello, President of the Federal Supreme Court; His Excellency Senator Antônio Carlos Magalhães, President of the Federal Senate and the National Congress; His Excellency House Representative Michel Temer, President of the House of Representatives; Her Excellency Dr. Delza Curvello Rocha, General Under-Prosecuting Attorney of the Republic; His Excellency Reverend Don Geraldo Ávila, Military Archbishop of Brazil; Their Excellencies the ambassadors of Germany, Austria, China, Egypt, United States, Gabon, Haiti, Hungary, Iraq, Lebanon, Malaysia, Morocco, Poland, Switzerland and Thailand; active and retired Ministers of the Federal Supreme Court; Presidents and Ministers of Superior Courts; retired Ministers of this Court; Ministers of the Union's Accounts Court; Leaders of the Senate and the House of Representatives, through whom I greet all Parliamentarians present at this session; Dr. Geraldo Brindeiro, General Prosecuting Attorney of the Republic, through whom I greet all attending members of the Public Prosecution; Dr. Geraldo Magela da Cruz Quintão, General Attorney of the Union, through whom I greet all Brazilian Prosecuting Attorneys present today; Dr. Jose de Jesus Filho, acting Minister of Justice and a retired Minister of this House; Dr. Clovis de Barros Carvalho, Minister Chief of the Civil House of the Presidency of the Republic; Dr.



* Maiden Speech of justice Antônio de Pádua Ribeiro as President of the Superior Court of Justice and the Council of the Federal Justice, on, April 02, 1998.
RIBEIRO, Antônio de Pádua. Maiden speech in the presidency of the superior court of justice. Brasília: Superior Tribunal de Justiça, 1998.

Reginaldo Oscar de Castro, President of the Federal Council of the Brazilian Bar Association, through whom I greet all attending Lawyers; Judge Luiz Fernando Ribeiro de Carvalho, President of the Brazilian Magistrates Association, through whom I greet all Presidents of Magistrates Associations present at this ceremony; Court Judge Paulo Geraldo de Oliveira Medina; President of the Latin-American Magistrates Federation; Court Judge Jose Fernandes Filho, President of the Permanent Collegiate of Presidents of Courts of Justice in Brazil; Presidents of Courts of Justice and Collective Penal Courts, through whom I greet present High Court Judges, as well as State and Federal District Judges; Presidents of the Regional Federal Courts, through whom I greet attending Federal Judges; all other-high Authorities; Ladies, Gentlemen and Family Relatives.

My dear Colleagues, Ministers of this Court.

I take over the honorable functions of President of this Superior Court of Justice, at the twilight of this century and verge of the next millennium, with my eyes focused on public interest and with a firm purpose of developing the best of my efforts in favor of collective interests.

Sensitized, I extend my gratitude to my eminent Colleagues, who elected me and placed their trust in me. With their help, I intend to work with courage and perseverance for the benefit of this Court and for a better Judiciary that can at least meet the basic expectations of Brazilian society in terms of Justice.

I thank my dear Colleague and esteemed Friend Minister Paulo Roberto Saraiva da Costa Leite for his generous words, filled with an emotion that deeply touched me, when welcoming me on behalf of the Court, since they do not translate mere formality, but the expression of

his observations regarding the activities I have been exercising for many years in his honorable company. That is why they are so gratifying.

I would also like to thank Dr. Delza Curvello da Rocha, representing the Federal Public Prosecution, an institution to which I had the honor to belong and from where I have pleasant memories, for a speech that will certainly enhance the minutes of this session; and Dr. Reginaldo Oscar de Castro, my former colleague at the Law School of the University of Brasilia and today the President of the Federal Council of the Brazilian Bar Association, for his kind words and attested interest in a more efficient Judiciary, an idea which is also defended by us.

To all the employees of the Court and of the Federal Justice Council, from the most humble to the most graduated positions, my gratitude for their help and my trust that they will continue to collaborate, in their respective capacity, with the task of always making Justice more, efficient and respected. I wish to express my special solidarity in this difficult moment they are going through.

I would further like to express my special and affectionate gratefulness to:

My parents, Maria Atonieta Ribeiro and Evaristo Firmiano Ribeiro, whose memory I praise. During the obscure period of the New State, they went through serious hardships and persecution which served to strengthen their firm character of steel and intensify in bright colors their unbreakable faith in the highest principles of honesty, public spirit and love to their fellowmen and to God. I owe them a great deal for the way they brought me up.

My wife, Dr. Ívis Gloria, restless worker with a privileged intelligence, who has always shown her solidarity in complying with my family and professional obligations, and whose collaboration has been

essential to succeed in the successive struggles that, after meeting her, I came across during the course of my life.

My children Gloria Maria, Andréia and Clodoaldo, all Lawyers and Maria Antonieta, an academic in Medicine, for the happy moments they have afforded me, although, due to my many times involuntary omissions, I could not dedicate to them the care they deserved.

Dr. Gabriel Portella, my son-in-law, to whom I pledge my friendship and admiration, for his dedication to all our family members aiming at a harmonious relationship.

My newly-born granddaughter Yasmine, whom I greet with special affection and thank God for her birth, with the hope that she can live in a society that is better than the one we have today and towards which, I trust, all of us present here will contribute.

All of us remember that, when the Constitution currently in effect was promulgated, the congressmen were mostly concerned with a lawful democratic State and with citizenship. The text of the Constitution contains a set of individual, political and social rights and guaranties and, moreover, creates and improves existing remedies to processes, aware of Jhering's words that "the essence of the Law is its practical accomplishment".

Ten years have passed. Much has been and continues to be done to make the constitutional principles come true. The Brazilian people are increasingly aware of their rights and obligations as citizens. The atmosphere is of broad democratic freedom, but the structure of state powers is still archaic. The state machine moves slowly and many of its leaders are still concerned with the interests of the oligarchies, to whom they bow, instead of the users of their services - the population.

The truth is the State passes through a crisis; and its actions are not corresponding to the expectations of citizens. In an age of globalization and economic liberalism, public entities have been the object of bitter criticism under the allegation that their work has not been satisfactory in safeguarding collective interests and that it has forgotten its main objective, common to all of Humanity: to make the dream of happiness come true.

One cannot deny that the crisis of the State has an impact on the Judiciary. A dismembered social welfare and excessive modifications in economic, tax and personnel policies have caused the Courts and Tribunals to be overloaded with countless proceedings. Moreover, laws are constantly being promulgated and modified, generating juridical insecurity and imposing difficulties to the work of the Judiciary.

If the State is not reorganized with the political reform and that of the Executive and Legislative Powers, by adapting constitutional texts from the parliamentary to the presidential regime, and if there is no stability in the legislation, it will be difficult to conceive a Judiciary that can efficiently meet the needs of the Brazilian population.

Consideration should be given to the fact that the expansion of legislative activities and the increasing amount of legislation, besides overburdening the parliaments, contributed to the emergence of ambiguous and vague laws, leaving delicate political choices to interpretation and application. Furthermore, social rights, in general, are "promotional" and future-oriented and, in order to gradually achieve them, there should be an effective and prolonged interference from the State. In that case, when executing pertinent laws, judges cannot stand still and, instead, should keep in mind the social objectives of programs vaguely prescribed by said rules. Those aspects promoted the emergence of a stronger judicial activism. It is to regret, however, that the critics of

that activism, in general, did not understand the originating phenomena, as pointed out by Mauro Cappelletti.

In view of above situation, and in order to accomplish the ideal of the constituents, some institutional improvements are required, particularly a change in the mentality of the Powers of the Republic. In the case of the Judiciary, a new understanding of the concepts and rules of the judicial process and of the role of the modern judge is mostly required. However, the truth is that, without organized and efficient Legislative and Executive Powers, Justice will continue to be inefficient.

Justice has been quite criticized. Some even affirm that **its** has failed. That assertion, however, does not correspond to the truth. Can failure be attributed to a Court that, during the past year, delivered 102,054 judgments, an amount never achieved before by any Brazilian Court and representing an average of over 3,500 proceedings per Minister? Can failure be attributed to the Federal Justice, whose Courts judged, since its creation by the present Constitution, more than 1,200,000 legal suits, and to the first-degree Federal Justice, which, in the past five years, judged approximately 2,300,000 proceedings? Can various state Courts and Tribunals have failed when they have managed to keep the judgment of proceedings up-to-date? Of course not.

However, Justice has failures. They exist and should be corrected. Those deficiencies are of a structural nature and derive particularly from a legislation that has been surpassed by modern times and that should be updated and interpreted as required by the dynamics of a mass society with globalization trends.

There is a positive aspect, however. The judges and employees, in general, have an excellent level and were selected through difficult public examinations, but the total number of staff is not enough to manage the amount of proceedings.

In Brazil, there is approximately one judge for every twenty thousand inhabitants, when the ideal would be one for every five thousand or less, as evidenced in more developed countries. There are many cases pending judgment because there is a limited number of judges, and not because active judges are not working.

The remuneration of judges is quite degrading and there are no career perspectives, thus the difficulties in filling existing functions, of which twenty-five percent are vacant. According to a study disseminated by the Brazilian Magistrates Association, a lawyer no longer wants to be a judge.

At the federal level, however, I would like to transmit some good news: after negotiations coordinated by me in a partnership with the Presidents of the Superior Labor Court, Superior Military Court and Court of Justice of the Federal District and Territories, the President of the Republic gave his definite support for the immediate adjustment of the salaries of federal judges, which is the object of a law under process, with utmost urgency, at the House of Representatives. I take this opportunity to emphasize the decisive support given to said project by His Excellency the President of that House of the National Congress and by the Leaders of the Government, including some from opposition parties.

However, disturbing reflections persist regarding the social welfare reform. There is a prevailing understanding in the juridical sphere, already proclaimed by the Federal Council of the Brazilian Bar Association, that the so-called "reducing percentage" demoralizes the category of judges and violates a juridically consolidated clause. There is still time to correct the mistake, and this is expected from the House of Representatives who are sensible to the fundamental principles that govern the organization of the Brazilian State.

On the other hand, uncertain of their rights and guaranties traditionally respected by the Brazilian Constitutions, and in view of said reform, hundreds of judges and employees, particularly those with more experience, have opted and continue to opt for premature retirement, causing great and regretful losses to the administration of Justice and leaving gaps which are difficult to fill with the staff of the Judiciary.

The Powers of the Republic have problems to solve in their respective areas and have been looking for solutions. Much has changed at the Judiciary level. Access to Justice has been facilitated, particularly with the creation of collective actions and special courts. Means for alternative solutions to disputes have been stimulated. And most important: changes in the mentality of judges have been fast; they are increasingly aware of their duties before society and have made an effort to comply with them, even when, occasionally, they are misinterpreted in his actions.

However, much more can be done. Therefore, intensifying collaboration between representatives of the State Powers is essential to achieve the greatest objectives of society, and that process seems to be at a promising stage. Discussions, vested with notorious public sense, have been increasingly more frequent with the purpose of redefining the common interests at the institutional, legislative and administrative levels.

In my opinion, what is important at this point is to increase the understanding between the Powers, so as to overcome the differences derived from exercising the three basic functions of the State, focusing on the common interest. That does not mean disregarding the principles that govern the functions of each Power, but effectively approximating their members to take measures of general interest, for the benefit of society as a whole. What should be done is to comply with the second part of Article 2 of the Constitution, which provides that the Powers are independent although harmonious with one another. In other, words:

independence does not exclude harmony, and harmony can only be achieved through conversations; fiscalized by society, that enable the identification of converging positions, so that the problems of the State are solved within the time frame required by modern times.

The construction of a democratic State requires specialized juridical and political skills. It requires ability, knowledge and perseverance. It will not be achieved with sharp phrases or bombastic measures that have little practical results. It should be constructed slowly, with sensibility, transparency and public sense. That is the only way it can be effective. Those who want to help in this task should be stimulated and supported in their search for a common solution or that, at least, is endorsed by a significant part of society.

There is no more space for the so far unproductive discussions between the members of the State Powers who, before natural divergence in the equation and solution of problems, have opted for criticism which, instead of enhancing, degrades the image of participants before public opinion. Citizens intuitively perceive that they could not expect very much from public managers who do not come to an agreement on the solution of matters of collective interest and, instead, avail themselves of insults, a resource used by those who do not have arguments. Those managers forget that, before striking their assumed opponent, they are frustrating the hopes of citizens in the efficiency of actions of constituted authorities.

Similar to what takes place with the activities of judges, members of the Public Ministry and lawyers, the relationship between the Powers follows the principle of intercommunicating vessels. The State can only function well when basic activities are exercised in harmony, without fraud or malice, at the ethical level. A Power that, through the actions of its agents, is disrespectful to the other ignores what cannot be denied: there is no way to decrease the level of one part without equally

decreasing the level of the other part. The defects of some provoke reactions on others. And, regarding mutual respect, it is

nonexistent in the highest sense: respect does not follow an up-down or down-up direction. It always manifests itself horizontally. The three of them are so interrelated that the promotion of one is dignifying for all, as well as disrespecting one is an insult to all of them.

Ladies and gentlemen, we are going through difficult, but at the same time, promising times. As we visit various corners of the national territory, from north to south and from east to west, we realize that, despite the serious social problems and obstacles to overcome, the atmosphere is not of discouragement as in past years, when our brothers, many of whom hopeless youngsters, migrated to other countries due to a lack of perspective regarding a respectable life in the land they were born. That situation has changed. Everywhere, in more or less fertile soils of agricultural and industrial, cultural and intellectual production, as well as of trade and services, we can already see the emergence of plants that germinate, ever more exuberant, coloring in green the Brazilian soil and translating hope for better days.

It is important that every one of us, with a feeling of fraternity and love for our Country, comply with our obligations within the scope of our responsibilities. Furthermore, it should always be present in our minds that no society is really organized without justice, which is a feeling that is part of human roots and the energy that moves Humanity to achieve its highest ideals.

While President of this Court, I will always be available to, together with my dear Colleagues, welcome all of those responsible for the State and for society who, in good faith and fraternal spirit, wish to strive to accomplish the greatest objectives of Brazilian citizens, especially regarding a more efficient Justice that can be accessed not only by well-to-do but by all citizens affected in their individual, collective and social

rights, and that may provide its timely collaboration in the struggle against existing poverty and inequality in the Country.

May God help me execute such honorable responsibility and enlighten me so that this administration is a fruitful one for my fellow citizens, especially the less privileged and most humble ones and the most anxious for justice.

Finally, I cannot but pay my tribute to the remarkable ex-President of this Court, Minister Américo Luz, for his good sense, public spirit and efficiency in exercising his short, but fruitful mandate, and manifest my trust that I may count with the special collaboration of Minister Cid Flaquer Scartezzini, who has assumed as Vice-President.